In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1452

HELEN PANAS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted, together with codefendants Cervantes and D'Ambrosio, of passing counterfeit currency and of conspiracy, in violation of 18 U.S.C. 371, 471-474. Petitioner was sentenced to imprisonment for six months on the conspiracy count and was placed on probation for five years with sentence suspended on the two substantive counts. On March 6, 1972, the court of appeals affirmed. The petition for a writ of certiorari was not filed until May 6, 1972, and is substantially out of time under Rule 22(2) of the Rules of this Court. In any event, the question here sought to be raised does not merit review.

Petitioner questions only the propriety of the limits placed on the cross-examination of government witness Marguerite Swartz. This witness testified on direct examination that she met defendant Cervantes in Chicago in August 1964 and defendant D'Ambrosio shortly thereafter. About the end of September 1964, Cervantes induced the witness to assist in the passing of counterfeit money. She passed between ten and fifteen counterfeit twenty-dollar bills (Tr. 421-424).[1] Thereafter, the witness participated in a three-day session at the apartment of one of the defendants, from December 7 to December 9, 1964, during which she, the petitioner, D'Ambrosio, and one Don Johnson, an unindicted co-conspirator, processed counterfeit ten-dollar bills (Pet. App. A 3).

After Miss Swartz testified on cross-examination, with respect to her participation in this counterfeiting session, that she was afraid of D'Ambrosio and that he had threatened her physically (Tr. 535), the court, on government counsel's representation (joined by D'Ambrosio's counsel) that he "knew what the witness [would] say and it's very prejudicial to the defendant D'Ambrosio," refused to allow the witness to testify as to the precise threats that had been made to her, on the ground that it was outside the scope of direct examination (*ibid.*). The court next sustained an objection to the inquiry whether petitioner had ever told the witness anything which caused the witness to be afraid of D'Ambrosio (Tr. 536). The following then transpired (*ibid.*):

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[1] "Tr." refers to the two volumes of trial transcript (Volumes 4 and 10) that we are lodging herewith.

Q. When you say that you were somewhat coerced into making the money, don't you mean that if it is true that Miss Panas made the money, she was also somewhat coerced?

MR. HUYCK [government counsel]: Objection.

THE COURT: Sustained. The conclusions are for the jury to draw.

Defense counsel made no offer of proof as to his purpose in pursuing this line of inquiry, but simply terminated his cross-examination following this ruling.

In his summation, petitioner's counsel argued briefly that if Miss Swartz was "somewhat under duress" during the three-day stay in the apartment where the counterfeiting operation was going on, the same must also have been true as to petitioner (10 Tr. 1191).

Petitioner was not denied her right of confrontation by the limitations placed on the cross-examination of Miss Swartz. To begin with, petitioner's counsel was given wide leeway to explore with Miss Swartz the events occurring during the processing of the counterfeit bills (Tr. 515-529). It was thus adduced that she had felt under duress by virtue of D'Ambrosio's orders not to leave the premises; she also testified that petitioner was under those same orders. The precise limitations placed on cross-examination related only to three questions—two dealt with Miss Swartz's state of mind, a matter which had already been gone into and was basically collateral, while the third sought a conclusory answer from the wit-

ness regarding petitioner's state of mind rather than a response relating to any statements made by petitioner or her co-defendants. Considering further that petitioner at that time made no offer of proof or other affirmative indication that she was raising the defense of duress, the trial judge acted within his discretion in not permitting this line of cross-examination. Indeed, such a ruling would have been entirely appropriate even had this not been a joint trial. See *Baker* v. *United States*, 401 F. 2d 958, 986-987 (C.A. D.C.), remanded on other grounds, 301 F. Supp. 973 (D. D.C.), affirmed, 430 F. 2d 499, certiorari denied, 400 U.S. 965.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1972.

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[2] Although the denial of her motion for severance is not directly challenged, petitioner does suggest that the ruling limiting the cross-examination of Miss Swartz stemmed from the fact that this was a joint trial (Pet. 9). Apart from what we have discussed in the text, we point out that the propriety of the joinder was considered by the court below, which determined that it was justified in the circumstances (Pet. App. A 4-5).

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